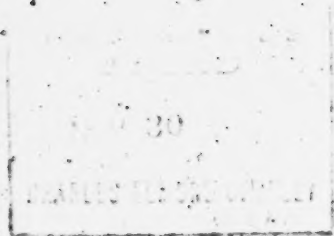


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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 563

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, PENNSYLVANIA-NEW JERSEY,

Petitioner,

vs.

JOHN D. COLBURN AND BESSIE COLBURN.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF ERRORS AND APPEALS OF THE
STATE OF NEW JERSEY AND BRIEF IN SUPPORT THEREOF

EDWARD P. STOUT,
Counsel for Petitioner.

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vs.

JOHN D. COLBURN AND BESSIE COLBURN.

**PETITION FOR WRIT OF CERTIORARI TO THE
NEW JERSEY COURT OF ERRORS AND APPEALS**

*To the Honorable Chief Justice and Associate Justices of
the Supreme Court of the United States:*

The Delaware River Joint Toll Bridge Commission, Pennsylvania-New Jersey, a body corporate and politic created and organized pursuant to a compact between the Commonwealth of Pennsylvania and the State of New Jersey, respectfully presents this petition for a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals, the highest Court of the State of New Jersey in which a decision in the above entitled cause could be had, rendered September 22nd, 1939 (R. 282).

Statement of the Case

On June 25th, 1931, the Legislature of the Commonwealth of Pennsylvania enacted a statute (Act No. 332, P. L. 1352) authorizing the Governor of the Commonwealth of Pennsylvania to enter into a compact or agreement with the State of New Jersey to create the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties, which statute was amended in certain respects on May 18th, 1933 (Act No. 138, P. L. 1827), and on June 11th, 1934 the Legislature of the State of New Jersey enacted a statute (P. L. 1934, C. 215) of the same import as the Pennsylvania statute as amended, authorizing the Governor of the State of New Jersey to enter into said compact or agreement with the Commonwealth of Pennsylvania.

Pursuant to the legislative authority, a compact was entered into between the Commonwealth of Pennsylvania and the State of New Jersey, which was signed by the Governor of New Jersey on December 18th, 1934, and by the Governor of Pennsylvania on December 19th, 1934, and which compact was assented to by Congress by Act approved August 30th, 1935 (Public—No. 411—74th Congress), such assent being a requisite to its validity under Art. I, Sec. X (2) of the Federal Constitution. A copy of the said compact is annexed hereto and made a part hereof.

In accordance with the powers conferred and the duties imposed by the compact, your petitioner undertook to build the bridge across the Delaware River from Phillipsburg, New Jersey, to Easton, Pennsylvania, and acquired by purchase and not by condemnation certain lands in the Town of Phillipsburg, and constructed thereon the New Jersey portion of said bridge and its approach.

John D. Colburn and Bessie Colburn (respondents herein), asserting that they were the owners of lands in

Phillipsburg adjacent, to the rear, to the lands acquired by your petitioner, and upon which the bridge was built, made a claim against your petitioner for damages for depriving them of air, light and view, and curtailing their access, by reason of the construction of the bridge and its approach (R. 21, 22).

None of the Colburns' lands or street access thereto were taken, and they conceded that they had no claim for damages against your petitioner, unless a right in their favor had been created by the compact (R. 23).

Your petitioner refused to allow the Colburns' claim for damages, upon the ground that their damages, if any, were *damnum absque injuria*, and that under the compact they were not entitled to damages.

The Colburns then applied to the New Jersey Supreme Court for an alternative writ of mandamus against your petitioner, and on March 18, 1938, the New Jersey Supreme Court filed an opinion that an alternative writ of mandamus should issue (R. 13), and on May 19, 1938, the alternative writ of mandamus was issued (R. 20).

Thereafter, the mandamus suit was prosecuted and a trial was had at Circuit, which resulted in a *postea* (R. 35), and on December 17, 1938, the New Jersey Supreme Court entered a final judgment (R. 43) thereon in favor of John D. Colburn and Bessie Colburn and against your petitioner, directing the issuance of a peremptory writ of mandamus commanding your petitioner to pay to John D. Colburn and Bessie Colburn, by agreement if possible, an amount equal to the extent to which the value of their property had been diminished by reason of the building of a bridge abutment to the rear of their lands; and upon failing to agree in that regard, to institute, prosecute and consummate proceedings for the determination of the amount to be awarded to them as compensation for the damages by them sustained from the injury to their land, pursuant to

the provisions of Chapter 215 of the Laws of 1934 (R. S. 1937, 32:8-1, *et seq.*), providing for proceedings according to Chapter 297 of P. L. 1912, as amended by Chapter 276 of P. L. 1919 (R. S. 1937, 32:9-1, *et seq.*) (R. 46).

Your petitioner appealed from the judgment of the New Jersey Supreme Court awarding a peremptory writ of mandamus to the New Jersey Court of Errors and Appeals, the highest court of New Jersey having jurisdiction of the matter, which Court, upon an opinion filed September 22, 1939, affirmed the judgment of the New Jersey Supreme Court, and a judgment of affirmance was entered on September 22, 1939, which is the judgment here sought to be reviewed.

Both the Supreme Court of New Jersey (R. 17) and the Court of Errors and Appeals of New Jersey (R. 278) held that the compact created a new right in favor of the Colburns to damages in law, and that except for the compact they would have no right to damages; while in Pennsylvania under the decisions of its Courts, an owner whose lands were similarly situated would have no right to damages.

The compact (Art. III) only authorizes your petitioner to acquire or take "real property," as that term is defined therein. The definition should not be construed as imposing upon your petitioner the duty to pay damages for real property not taken. The expression "claims for damage to real estate," as included in the definition in the compact, is a grant of permission to the Commission, in connection with the condemnation of land, to acquire all interests of every kind which any person may have therein, including existing claims by the owner against third parties for damages to his land. Nowhere in the compact is there any provision which should be construed as imposing upon the Commission the duty to pay consequential damages for injuries to real estate not taken.

Your petitioner, therefore, alleges that the New Jersey Courts were in error in determining that the compact did

impose upon your petitioner the duty to pay consequential damages for injuries to real estate not taken.

Your petitioner further alleges that the New Jersey Courts were in error in holding that the New Jersey Act of April 1, 1912 (P. L. 1912, C: 297), authorizing the predecessor of the present Bridge Commission (your petitioner) in acquiring existing toll bridges over the Delaware River, after view, to estimate the value of the property taken "as well as the damages for property taken, injured or destroyed," imposed a duty upon your petitioner to pay consequential damages, because this forms no part of the compact, the reference in the compact being for the very limited purpose of providing an additional method of acquiring property by the exercise of the power of eminent domain. By the compact the taking may be by eminent domain proceedings under the respective general Eminent Domain Acts of the respective States, or "in the manner provided by" the New Jersey Act of 1912, which related only to the acquisition of existing bridges and required awards therefor to be determined before the taking, and did not authorize or contemplate the construction of new bridges.

Question Presented

Under the compact between Pennsylvania and New Jersey, did respondents, in respect to their real property, none of which or street access thereto were taken by petitioner, have a right to consequential damages by the obstruction of view and limitation of light and air, and by the closing of streets in the acquisition of land and the building of the bridge by petitioner?

Reasons for the Petition

The reasons for which this petition is presented are:

1. The highest court of New Jersey has rendered a decision where is drawn in question the construction of a com-

compact between the Commonwealth of Pennsylvania and the State of New Jersey.

2. The construction of a compact between states is a Federal question which can only be finally disposed of by this Court.

3. The compact is a contract or agreement which can only be finally construed under Federal Law.

4. Neither the courts of Pennsylvania nor of New Jersey can finally determine the question of construction of the compact.

5. The construction given to the compact by the New Jersey Court of Errors and Appeals is erroneous in that the Court held that the compact created a right to consequential damages by the obstruction of view and limitation of light and air, and by the closing of streets in the acquisition of land and the building of the bridge by petitioner, whereas a true construction of the compact should be to the contrary.

6. The Commonwealth of Pennsylvania, as a party to the compact, has signified that it does not agree with the construction placed upon the compact by the New Jersey Court of Errors and Appeals, and petitioner, as a body corporate and politic created by the compact between Pennsylvania and New Jersey is in duty bound to secure, if possible, a final and conclusive determination by this Court as to the meaning and application of the compact in respect to claims for damages by land owners whose real property and street access thereto are not taken, and whose only claim is for consequential damages by the obstruction of view and limitation of light and air, and by the closing of streets in the acquisition of land and the building of the bridge by petitioner.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue to the New Jersey Court of Errors and Appeals, and submits hereto the annexed brief in support of its petition.

Respectfully submitted,

EDWARD P. STOUT,
Attorney for Petitioner.

AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA AND THE STATE OF NEW JERSEY

Creating the Delaware River Joint Toll Bridge Commission as a body corporate and politic and defining its powers and duties

Whereas, The commission, on behalf of the Commonwealth of Pennsylvania, existing by virtue of the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), and its supplements and amendments, and the commission, on behalf of the State of New Jersey, existing by virtue of the provisions of the act, approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and its supplements and amendments, acting as a joint commission, have acquired various toll bridges over the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey; and

Whereas, Additional bridge facilities between the two States will be required in the future for the accommodation of the public and the development of both States; and

Whereas, Such additional bridge facilities should be developed without the expenditure of large sums from the public revenues; and

Whereas, It is highly desirable that there be a single agency for both States empowered to further the transportation interests of these States with respect to that part of the Delaware River north of the stone arch bridge of the Pennsylvania Railroad from Morrisville to Trenton: now therefore,

The Commonwealth of Pennsylvania and the State of New Jersey do hereby solemnly covenant and agree, each with the other, as follows:

ARTICLE I.

There is hereby created a body corporate and politic, to be known as the Delaware River Joint Toll Bridge Commission (hereinafter in this agreement called, the "Commis-

sion"), which shall consist of the commissioners, on behalf of the Commonwealth of Pennsylvania, provided for by the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, and of commissioners, on behalf of the State of New Jersey, provided for by the act, approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and its supplements and amendments, for the acquisition of toll bridges over the Delaware River, which said commissions have heretofore been acting as a joint commission by virtue of reciprocal legislation.

No action of the commission shall be binding unless a majority of the members of the commission from Pennsylvania and a majority of the members of the commission from New Jersey shall vote in favor thereof.

The commission shall constitute the public corporate instrumentality of the Commonwealth of Pennsylvania and the State of New Jersey for the following public purposes, and shall be deemed to be exercising an essential governmental function in effectuating such purpose, to wit:

(a) The administration, operation, and maintenance of the joint State-owned bridges across the Delaware River between the Commonwealth of Pennsylvania and the State of New Jersey, and located north of the present stone arch bridge of the Pennsylvania Railroad across the Delaware River from Morrisville to Trenton;

(b) The investigation of the necessity for additional bridge communications over the Delaware River north of the said railroad bridge, and the making of such studies, surveys, and estimates as may be necessary to determine the feasibility and cost of such additional bridge communications;

(c) The preparation of plans and specifications for, and location, construction, administration, operation and maintenance of, such additional bridge communications over the Delaware River, north of the aforesaid railroad bridge, as the commission deems necessary to advance the interests

of the two States and to facilitate public travel; and the issuance of bonds and obligations to provide moneys sufficient for the construction of such bridges; and the collection of tolls, rentals, and charges for the redemption of such bonds and obligations, and the payment of interest thereon;

(d) The procurement from the Government of the United States of any consents which may be requisite to enable any project within its powers to be carried out.

ARTICLE II.

For the effectuation of its authorized purposes, the commission is hereby granted the following powers:

- (a) To have perpetual succession.
- (b) To sue and be sued.
- (c) To adopt and use an official seal.
- (d) To elect a chairman, vice-chairman, secretary and treasurer, and appoint an engineer. The secretary, treasurer, and engineer need not be members of the commission.
- (e) To adopt suitable by-laws for the management of its affairs.
- (f) To appoint such other officers, agents and employees as it may require for the performance of its duties.
- (g) To determine the qualifications and duties of its appointees, and to fix their compensation.
- (h) To enter into contracts.
- (i) To acquire, own, hire, use, operate, and dispose of personal property.
- (j) To acquire, own, use, lease, operate, and dispose of real property and interest in real property, and to make improvements thereon.
- (k) To grant the use of, by franchise, lease, and otherwise, and to make and collect charges for the use of, any property or facility owned or controlled by it.

(l) To borrow money upon its bonds or other obligations, either with or without security.

(m) To exercise the power of eminent domain.

(n) To determine the exact location, system, and character of, and all other matters in connection with, any and all improvements or facilities which it may be authorized to own, construct, establish, effectuate, maintain, operate or control.

(o) In addition to the foregoing powers, to exercise the powers, duties, authority and jurisdiction heretofore conferred and imposed upon the aforesaid commissions, hereby constituted a joint commission by reciprocal legislation of the Commonwealth of Pennsylvania and the State of New Jersey, with respect to the acquisition of toll bridges over the Delaware River, the management, operation and maintenance of such bridges, and the location, construction, operation and maintenance of additional bridge communications over the Delaware River north of the aforesaid railroad bridge of the Pennsylvania Railroad.

(p) To exercise all other powers, not inconsistent with the Constitutions of the State of Pennsylvania and New Jersey or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments for benefits; and generally to exercise, in connection with its property and affairs and in connection with property under its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE III.

If for any of its authorized purposes (including temporary purposes), the commission shall find it necessary or convenient to acquire for public use any real property in the Commonwealth of Pennsylvania or the State of New Jersey, whether for immediate or future use, the commission may, by resolution, determine to acquire such property by a fee simple absolute or a lesser interest, and the

said determination shall not be affected by the fact that such property has theretofore been taken for or is then devoted to a public use, but the public use in the hands or under the control of the commission shall be deemed superior to the public use in the hands or under the control of any other person, association, or corporation.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the Commonwealth of Pennsylvania, for any reason whatsoever, then the commission may acquire such real property by the exercise of the right of eminent domain, in the manner provided by the act, approved the eighth day of May, one thousand nine hundred and nineteen (Pamphlet Laws, one hundred forty-eight), entitled "An act providing for the joint acquisition and maintenance by the Commonwealth of Pennsylvania and the State of New Jersey of certain toll bridges over the Delaware River," and the acts amendatory thereof and supplementary thereto, relating to the acquisition of inter-State toll bridges over the Delaware River.

If the commission is unable to agree with the owner or owners thereof upon terms for the acquisition of any such real property, in the State of New Jersey, for any reason whatsoever, then the commission may acquire such property by the exercise of the right of eminent domain, in the manner provided by the act of the State of New Jersey, entitled "An act authorizing the acquisition and maintaining by the State of New Jersey, in conjunction with the State of Pennsylvania, of toll bridges across the Delaware River; and providing for free travel across the same," approved the first day of April, one thousand nine hundred and twelve (Chapter, two hundred ninety-seven), and the various acts amendatory thereof and supplementary thereto, relating to the acquisition of inter-State toll bridges over the Delaware River.

The power of the commission to acquire real property by condemnation or the exercise of the power of eminent domain in the Commonwealth of Pennsylvania and the State of New Jersey shall be a continuing power and no exercise thereof shall be deemed to exhaust it.

The commission and its duly authorized agents and employes may enter upon any land, in the Commonwealth or the State of New Jersey, for the purpose of making such surveys, maps, or other examinations thereof, as it may deem necessary or convenient for its authorized purposes.

However, anything to the contrary contained in this compact notwithstanding, no property, now or hereafter vested in or held by any county, city, borough, village, township or other municipality, shall be taken by the commission without the consent of such municipality, unless expressly authorized so to do by the Commonwealth or State in which such municipality is located. All counties, cities, boroughs, villages, townships and other municipalities, and all public agencies and commissions of the Commonwealth of Pennsylvania and the State of New Jersey, notwithstanding any contrary provision of law, are hereby authorized and empowered to grant and convey to the commission upon its request, but not otherwise, upon reasonable terms and conditions, any real property which may be necessary or convenient to the effectuation of its authorized purposes, including real property already devoted to public use.

The Commonwealth of Pennsylvania and the State of New Jersey hereby consent to the use and occupation by the commission of any real property of the said two States, or of either of them, which may be or become necessary or convenient to the effectuation of the authorized purposes of the commission, including lands lying under water and lands already devoted to public use.

The term "real property," as used in this compact, includes lands, structures, franchises, and interests in land, including lands under water and riparian rights, and any and all things and rights usually included within the said term, and includes not only fees simple and absolute but also any and all lesser interests, such as easements, rights of way, uses, leases, licenses, and all other incorporeal hereditaments, and every estate, interest or right, legal or equitable, including terms of years and liens thereon by way of judgments, mortgages, or otherwise, and also claims for damage to real estate.

ARTICLE IV.

Notwithstanding any provision of this agreements, the commission shall have no power to pledge the credit of the Commonwealth of Pennsylvania, or of the State of New Jersey, or of any county, city, borough, village, township and other municipality of said Commonwealth or State, or to create any debt against said Commonwealth or State or any such municipality.

ARTICLE V.

The commission is hereby authorized to make and enforce such rules and regulations, and to establish, levy and collect (or to authorize, by contract, franchise, liens or otherwise, the establishment, levying and collection of) such tolls, rates, rents, and other charges, in connection with any such bridge across the Delaware River which it may hereafter construct and operate, as it may deem necessary, proper, desirable and reasonable, which tolls, rates, rents, and other charges shall be at least sufficient to meet interest and sinking fund charges on bonds and obligations issued by the commission, the maintenance of such bridge, and the administrative expenses of the commission properly chargeable to such bridge. The commission is hereby authorized and empowered to pledge such tolls, rates, rents, and other revenues, or any part thereof, as security for the repayment, with interest, of any moneys borrowed by it or advanced to it for any of its authorized purposes, and as security for the satisfaction of any other obligation assumed by it in connection with such loans or advances.

ARTICLE VI.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or other obligations of the commission, for which tolls, rents, rates, or other revenues have been pledged, that, so long as any of said bonds or obligations remain outstanding and unpaid (unless adequate provision is otherwise made by law for the protection of those advancing moneys upon such bonds or obligations).

the Commonwealth of Pennsylvania and the State of New Jersey will not diminish or impair the power of the commission to own, operate and control said properties and facilities, or to establish, levy and collect tolls, rents, rates, and other charges in connection with such properties and facilities.

The Commonwealth of Pennsylvania and the State of New Jersey hereby covenant and agree with each other and with the holders of any bonds or obligations of the commission, for which tolls, rents, rates, or other revenues shall have been pledged, that the said Commonwealth and State will not authorize or permit the construction, operation and maintenance of any additional bridge or tunnel for the transportation of passengers by vehicles over the Delaware River by any other person or body, than the commission, within a distance of ten miles in either direction from any such toll bridge, measured along the boundary line between the said Commonwealth and the said State.

ARTICLE VII.

The bonds or obligations which may be issued by the commission for any of its authorized purposes, and as security for which tolls, rents, rates, and other revenues shall have been pledged, are hereby made securities in which all State and municipal officers and bodies of the Commonwealth of Pennsylvania and the State of New Jersey, and all banks, bankers, trust companies, savings banks, savings and loan associations, investment companies, and other persons carrying on a banking business, or insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries, and all other persons whatsoever, who now or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth of Pennsylvania or of the State of New Jersey, may properly and legally invest funds, including capital belonging to them or within their control; and said bonds or other obligations are hereby made securities which may properly and legally be deposited with and received by any State or municipal officer, or agency of the Commonwealth of Penn-

sylvania and the State of New Jersey, for any purpose for which the deposit of bonds or other obligations, either of the Commonwealth or of the State, is now or may hereafter be authorized.

ARTICLE VIII.

The effectuation of its authorized purposes by the commission is and will be in all respects for the benefit of the people of the Commonwealth of Pennsylvania and the State of New Jersey, and for the increase of their commerce and prosperity, and since the commission will be performing essential governmental functions in effectuating said purposes, the commission shall not be required to pay any taxes or assessments upon any property acquired or used by it for purposes authorized by this agreement; and the bonds or obligations issued by the commission, their transfer and the income therefrom, including any profits made on the sale thereof, shall, at all times, be free from taxation within the Commonwealth of Pennsylvania and the State of New Jersey.

ARTICLE IX.

The commission shall make annual reports to the Governors and Legislatures of the Commonwealth of Pennsylvania and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports, from time to time, to the Governors and Legislatures as it may deem advisable.

Whenever the commission, after investigation and study, shall have concluded plans, with estimates of cost, and means of financing any new toll bridge across the Delaware River, as hereinbefore provided, it shall make to the Legislatures of each State, at the next sessions thereof, a detailed report, dealing with the contemplated project; but such project may, nevertheless, be proceeded with if the Legislatures of said States, or either of them, are not in session.

ARTICLE X.

Whenever particular bonds issued for any bridge or bridges, and the interest thereon, shall have been paid, or a sufficient amount shall have been provided for their pay-

ment and shall continue to be held for that purpose, the commission shall cease to charge tolls for the use of such bridge and thereafter such bridge shall be a free bridge, and shall thereafter be maintained equally at the cost of the Commonwealth of Pennsylvania and the State of New Jersey by appropriations made for such purposes, as now provided by law for the maintenance of bridges over the Delaware River acquired by the Commonwealth of Pennsylvania and the State of New Jersey.

In Witness Whereof, This Eighteenth day of December, A. D. 1934, A. Harry Moore, has affixed his signature hereto as Governor of the State of New Jersey and caused the great seal of the State to be attached thereto.

[SEAL.]

A. HARRY MOORE,
Governor, State of New Jersey.

And, on this Nineteenth day of December, A. D. 1934, Gifford Pinchot, has affixed his signature hereto as Governor of the Commonwealth of Pennsylvania and caused the great seal of the Commonwealth to be attached thereto.

[SEAL.]

GIFFORD PINCHOT,
Governor, Commonwealth of Pennsylvania.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 563

DELAWARE RIVER JOINT TOLL BRIDGE COMMISSION, PENNSYLVANIA-NEW JERSEY,

Petitioner,

vs.

JOHN D. COLBURN AND BESSIE COLBURN.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF
CERTIORARI

POINT I.

The meaning and application of the compact between Pennsylvania and New Jersey for the acquisition, construction and maintenance of bridges across the Delaware River presents a Federal question reviewable here.

The Federal question involved was and is the determination of the effect of the compact.

The fundamental error of the New Jersey Court of Errors and Appeals was that it construed the compact between Pennsylvania and New Jersey, in respect to respondents' real property, none of which or street access thereto was taken by petitioner, as giving respondents a

right to consequential damages "by the closing of streets and by the obstruction of view and limitation of light and air by the construction of the abutments and approaches" (R. 278-279) by petitioner.

The New Jersey Court of Errors and Appeals further construed the compact as having included the New Jersey Act of 1912 as amended (P. L. 1912, C. 297, as amended by P. L. 1919, C. 76) in respect to an award for property "injured," although the reference in the compact to the 1912 Act was only to provide an alternate eminent domain method of acquiring property.

This, it is submitted, was error—(1) because the reference in the compact to the 1912 Act was for the very limited purpose of authorizing an alternate method in eminent domain procedure, and was not for the purpose of enlarging the scope of the Bridge Commission's authority to acquire real property as expressly defined in the compact itself, or for the purpose of imposing a duty upon the Bridge Commission to make awards for consequential damages; and, (2) because neither in the compact itself nor in the 1912 Act can there be found authority for a new right to an award for consequential damages for closing streets where street access is not taken and for the obstruction of view and the limitation of light and air in respect to lands not taken.

Manifestly, the determination of the effect of an interstate compact is a Federal question for ultimate adjudication by this Court.

U. S. Constitution, Art. I, Sec. X (2);

Hinderlider v. La Plata River and Cherry Creek Ditch Co., 304 U. S. 92 (Petition for Rehearing denied, 305 U. S. 668);

Kentucky v. Indiana, 281 U. S. 163;

Pennsylvania v. Wheeling & Belmont Bridge Company, 13 Howard 518;

Green v. Biddle, 8 Wheat. 1.

In *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, this Court said (p. 110):

“For the decision below necessarily rests upon the premise that at the time the compact was made Colorado was absolutely entitled to at least $58\frac{1}{4}$ cubic feet of water per second, regardless of the amount left for New Mexico. The judgment cannot stand if this determination is erroneous. For whether the water of an interstate stream must be apportioned between the two states is a question of ‘federal common law’ upon which neither the statutes nor the decisions of either state can be conclusive.”

The construction of the compact between Pennsylvania and New Jersey here under consideration is also, of necessity, a question of Federal law, upon which neither the statutes nor the decisions of either State can be conclusive.

In *Kentucky v. Indiana*, *supra*, this Court said (p. 176):

“It cannot be gainsaid that in a controversy with respect to a contract between states, as to which the original jurisdiction of this court is invoked, this court has the authority and duty to determine for itself all questions that pertain to the obligations of the contract alleged.”

In *Pennsylvania v. Wheeling & Belmont Bridge Company*, *supra*, this Court said (p. 566):

“This compact, by the sanction of Congress, has become a law of the Union. What further legislation can be desired for judicial action?”

and further said (p. 566):

“In the case of *Green et al v. Biddle*, 8 Wheat. 1, this court held that a law of the State of Kentucky, which was in violation of this compact between Virginia and Kentucky, was void; and they say this court has authority to declare a state law unconstitutional,

upon the ground of its impairing the obligation of a compact between different states of the Union."

In the instant case it is the New Jersey Statute, as construed by the New Jersey Court of Errors and Appeals, which impairs the obligation of the compact.

Even though the solution of questions of construction of interstate compacts involve the determination of the effect of the local legislation of either State, this Court has the authority and duty to determine for itself all questions pertaining to the compact.

In *Kentucky v. Indiana*, *supra*, this Court said (p. 176):

"The fact that the solution of these questions may involve the determination of the effect of the local legislation of either state, as well as of acts of Congress, which are said to authorize the contract, in no way affects the duty of this court to act as the final, constitutional arbiter in deciding the questions properly presented."

Obviously, neither the Courts of Pennsylvania or New Jersey can finally determine questions arising from the construction and interpretation of the compact between the two States.

The two States are not necessary parties to this review. *Hinderlider v. La Plata River and Cherry Creek Ditch Co.*, *supra*—on this point this Court said (p. 110):

"It has been suggested that this court lacks jurisdiction to determine the validity and effect of the compact because Colorado and New Mexico, the parties to it, are not parties to this suit and cannot be made so. The contention is unsound."

The judgment, a review of which is sought here, awarded a peremptory writ of mandamus, and is therefore a final judg-

ment reviewable by this Court, even though the matter of the amount of the award to be made is still open.

Detroit & M. R. Co. v. Michigan R. Commission, 240 U. S. 564;

Wheeling & B. B. Co. v. Wheeling Bridge Co., 138 U. S. 287.

POINT II.

Under the compact between Pennsylvania and New Jersey, landowners are not entitled to consequential damages.

It was conceded by the Colburns (respondents herein) in the mandamus suit that they had no right to damages, unless such right was conferred by the compact between the two States, and that the legal question involved in the suit was the construction of the compact.

The New Jersey Court held that the Colburns had no right to damages, unless the statutes authorizing the making of the compact created and gave such right (R. 279). The New Jersey Court also held that although the New Jersey Constitution does not provide for damages for injury from the construction of public works, the provision of the Pennsylvania Constitution in respect thereto should be read into the compact (R. 280), overlooking, however, the decisions of the Pennsylvania courts, which uniformly are that even though a provision of the Pennsylvania Constitution affords compensation to landowners for property injured by the construction of public works, this constitutional provision does not justify an award for consequential damages, unless there is a statute expressly providing therefor.

At the time of the making of the compact, the constitutional provisions of Pennsylvania and New Jersey applicable, and the rule of law as stated in the decisions of our courts, were as follows:

In New Jersey there was and is no constitutional provision for damages for "injury" to property, but only for "taking," which is:

"Private property shall not be taken for public use without just compensation; but land may be taken for public highways as heretofore until the Legislature shall direct compensation to be made." New Jersey Constitution, Art. I, Sec. 16.

Under the New Jersey decisions there was no right to light, air and view over other lands, and in eminent domain proceedings no right to an award for consequential damages for obstruction of view, limitation of light and air, or from the closing of streets.

Barnett v. Johnson, 15 N. J. Eq. 481;

Harwood ads. Tompkins, 24 N. J. L. 425;

Hayden v. Dutcher, 31 N. J. Eq. 217;

Neitark v. Hatt, 79 N. J. L. 548;

R. & A. Realty Corporation v. Pennsylvania Railroad Company, 16 N. J. Misc. Reps. 537.

In Pennsylvania there is a constitutional provision for damage to property "injured" as well as for "taking," which is:

"Municipal and other corporations and individuals invested with the privilege of taking private property for public use shall make just compensation for property taken, injured or destroyed by the construction or enlargement of their works, highways and improvements, which compensation shall be paid before such taking, injury or destruction * * * (Italics ours.) Pennsylvania Constitution, Art. 16, Sec. 8.

The courts of Pennsylvania have held that even under their Constitution there could be no recovery for consequential damages by adjoining landowners, unless in addi-

tion to the constitutional provision there was a statute expressly giving a right thereto.

In re Soldiers and Sailors Memorial Bridge, etc., in the City of Harrisburg, 308 Pa. 487;

Hoffer v. Reading Co., 287 Pa. 120;

Westmoreland C. & C. Co. v. Public Service Commission, 294 Pa. 451;

Pennsylvania Railroad Company v. Marchant, 119 Pa. 541, aff. 153 U. S. 380;

Pennsylvania Railroad v. Lippincott, 116 Pa. 472;

Holmes v. Public Service Commission, 79 Pa. Sup. Ct. 381,

and no recovery was ever allowed, unless the structure complained of had been erected in a public street.

The decisions in other jurisdictions were that even with constitutional provisions similar to those of Pennsylvania, and with statutory provisions similar to those of the compact, injuries of the kind here involved were *damnum absque injuria*, instances being:

Howell v. New York, New Haven and Hartford Railroad Co., 221 Mass. 169;

Euchus v. Los Angeles, etc. Railroad Co., 103 Cal. 614.

There have been no decisions by either the Courts of Pennsylvania or of New Jersey construing the compact, except those of New Jersey in the record here sought to be reviewed.

The New Jersey courts, in their opinions (R. 18), cited *Chester County v. Brower*, 12 Atl. (Pa.) 577, and *Pennsylvania Railroad v. Miller*, 132 U. S. 75. In those cases the structure complained of had been erected in a public street upon which the lands of the complaining party abutted, but in the later Pennsylvania case of *Westmoreland C. & C. Co. v. Public Service Commission*, 294 Pa. 451, the court de-

clined to follow the decision in *Chester County v. Brower*. In *Pennsylvania Railroad Co. v. Miller*, *supra*, the structure complained of consisted of an elevated railroad on a public street in front of the plaintiff's premises, which interfered with his access; whereas in the instant case, the structure complained of is on lands privately acquired and owned by the Bridge Commission, which are to the rear of the Colburns' property, whose access thereto was not interfered with by the building of the bridge.

The 1912 Act in question related only to the acquisition of existing bridges and not to the construction of new bridges. As above pointed out, the 1912 Act is referred to in the compact only for the purpose of providing an alternate method of procedure in condemnation, and the language in the compact defining real property as including "claims for damage to real estate" clearly means claims for damage to real estate existing against third parties in favor of an owner of lands taken.

Under the compact, when the Commission acquires real property it may also acquire not only the land taken, but all interests pertaining thereto, including existing rights against third parties for damages for injuries to the lands so taken. This definition in nowise justifies an award for consequential damages for obstruction of view, limitation of light and air, and curtailment of access by the construction of the bridge and its approach upon lands owned by the Bridge Commission.

There is nothing in the title, preamble, recitals or body of the compact to indicate any intention to create new, undefined and unlimited rights to consequential damages.

Under the determination of the New Jersey Court of Errors and Appeals, which petitioner seeks to have reviewed here, claims " " damages may now be asserted by any number of persons in the neighborhood of the bridge.

who can and undoubtedly will claim that their properties have been injured in respect to light, air, view and access, by the building of the Phillipsburg-Easton Bridge, and instead of being required to pay damages according to well settled rules of law, petitioner may be required to pay damages not only to all adjoining landowners, but to all landowners in the vicinity of the bridge and its approach, whose view has been changed, and whose light, air and access have been affected, notwithstanding that the claims are remote and fanciful, and although from time immemorial the courts have held that damages of the kind complained of are *damnum absque injuria*. Furthermore, the future functioning of the Bridge Commission will be seriously curtailed and interfered with because of its inability to reasonably estimate in advance the entire cost of proposed new bridges.

The compact can only be finally and authoritatively construed by this Court, and it is of great public importance that such construction be given at an early date.

Conclusion

For the foregoing reasons, it is respectfully submitted that this Court should grant a writ of certiorari to review the final judgment of the New Jersey Court of Errors and Appeals.

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